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CONSTITUTIONAL LAW — CLASS LEGISLATION — STATE POLL TAX ON ALIENS. — In 1920, California adopted a constitutional amendment, imposing an annual poll tax of ten dollars upon all adult male aliens. (CAL. CONST., art. 13; § 12.) A statute requires registration for this tax. (CAL. POL. CODE, §§ 3839-3856.) Upon failing to comply with the statute, a citizen of Mexico was arrested; and he now applies for a writ of *habeas corpus* on the ground that the amendment and the statute deny him the equal protection of the laws, in violation of the Fourteenth Amendment. *Held*, that the tax is unconstitutional. *Ex parte Kotta*, 200 Pac. 957 (Cal.).

It is settled that aliens may claim equal protection of the laws under the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U. S. 356. This amendment applies to state taxation. *Southern Railway Co. v. Greene*, 216 U. S. 400. See 1 WILLOUGHBY, CONSTITUTION, § 270. A state, however, may classify its population for purposes of legislation provided no arbitrary or unreasonable distinction is adopted. *Giozza v. Tiernan*, 148 U. S. 657. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 15, note (a). Moreover, the courts should respect the legislative view of what is reasonable in classification, unless no fair basis could possibly exist. *Missouri, Kansas & Texas R. R. Co. v. May*, 194 U. S. 267. Grounds of public safety and welfare at once suggest themselves to justify the exclusion of aliens from certain occupations such as liquor selling, and from holding public office. *Trageser v. Gray*, 73 Md. 250, 20 Atl. 905; *State ex rel. Off v. Smith*, 14 Wis. 497. And citizens are properly given preference as regards the wealth and resources of the state. *People v. Crane*, 214 N. Y. 154, 108 N. E. 427. But statutes debarring aliens, as such, from ordinary pursuits or from equal opportunity for private employment have been held indefensibly discriminatory. *Templar v. State Board of Examiners*, 131 Mich. 254, 90 N. W. 1058; *Truax v. Raich*, 239 U. S. 33. *A fortiori* no peculiarity attaches to aliens as a class, which could justify a state in making them the sole objects of a poll tax. *Juniata Limestone Co. v. Fagley*, 187 Pa. St. 143, 40 Atl. 977. The court might also have held the tax invalid in the principal case because of its tendency to interfere with the control of immigration, vested in the Federal government. *Lin Sing v. Washburn*, 20 Cal. 534.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — STATUTE EMPOWERING SOLICITOR TO CALL SPECIAL TERM OF COURT. — A South Carolina statute requires the Governor, on application of any circuit solicitor stating that the public interest demands a special term of court, to appoint a judge to hold it. The judge is selected with the advice of the Chief Justice of the South Carolina Supreme Court. (1912, 1 S. C. CODE OF LAWS, § 3841.) The defendant was convicted of rape at a special term called under the provisions of the statute. No other causes were tried at the term. The defendant appeals, contending that the statute violates the Fourteenth Amendment. *Held*, that the statute is unconstitutional. *State v. Gossett*, 108 S. E. 290 (S. C.).

Statutes empowering judges, when necessity demands it, to call special terms of criminal court are constitutional. *State v. Alfred*, 87 Vt. 157, 88 Atl. 534. See *Graham v. Comm.*, 164 Ky. 317, 175 S. W. 981. The statute involved here gives this power to the prosecuting officer; it is an expression of the legislature's determination that an expedient and effective scheme of procedure requires that the discretion of initiating proceedings be placed in his hands. It cannot be said that the legislative judgment has no foundation in reason. That being so, the statute is not unconstitutional because the court thinks the discretion might better have been given to some other officer. The special term of court will administer the law as impartially as any. The only effect of the statute is to provide a speedy trial, for which there is much to be said as a means of reducing lawlessness. Due process of law does not require delay; the policy of the law is to the contrary. See *Graham v. Comm.*, 164 Ky. 317,

328, 175 S. W. 981, 986. Though sometimes public opinion will be against the accused, it seems that he is sufficiently safeguarded by his right to apply for a change of venue when a fair trial cannot be had.

CONSTITUTIONAL LAW — EVIDENCE — OBJECTION AT TRIAL TO EVIDENCE OBTAINED BY UNLAWFUL SEARCH AND SEIZURE — DELAY IN OBJECTING. — On trial under an indictment for illicit distilling, all the evidence offered by the government was the testimony of three prohibition agents who went to the defendant's residence in his absence, and seized without a warrant what they believed to be parts of a still. They destroyed all the paraphernalia before trial. The defendant made no objection to the testimony when it was given, defending on the merits. Finally, after the general charge to the jury, he requested that an acquittal be directed, on the ground that the only evidence against him was obtained by unlawful search and seizure. *Held*, that it was error to refuse the request. *Holmes v. United States*, 275 Fed. 49 (4th Circ.).

It is a general rule that competent evidence will be received in a criminal case without inquiring how it was procured. See *Comm. v. Dana*, 2 Met. (Mass.) 329, 337; *State v. Flynn*, 36 N. H. 64, 68. Formerly this principle was applied by the Federal courts to evidence obtained by unlawful search and seizure. *Adams v. New York*, 192 U. S. 585; *Youngblood v. United States*, 266 Fed. 795 (8th Circ.). But the rule was practically abrogated when the Supreme Court decided that an inquiry must be made when the constitutional question is raised, if it seems probable that there has been an unconstitutional seizure. *Gouled v. United States*, 255 U. S. 298; *Amos v. United States*, 255 U. S. 313. In these cases, it is to be noted, objection to the testimony was promptly made. It has been held by some courts that failure to object at the time evidence is offered, or to move promptly that it be stricken out, waives the objection. *Comm. v. Valsalka*, 181 Pa. St. 17, 37 Atl. 405; *State v. Yourex*, 30 Wash. 611, 71 Pac. 203. But other courts have been more lenient, viewing the requisite of timely objection simply as a "rule of practice." *Morton v. State*, 43 Tex. Cr. Rep. 533, 67 S. W. 115. See also *Reg. v. Gibson*, 18 Q. B. D. 537. In the principal case, in view of the attitude of the Supreme Court, the leniency extended to the defendant was not unwarrantable. No unfairness resulted to the government by eliminating the testimony at the last minute, for it had no other evidence. That the evidence in this case was testimony and not the seized property itself, does not prevent the defendant from raising the constitutional objection. See *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — ADMINISTRATIVE DETERMINATION OF PRIVATE RIGHTS. — A Texas statute confers upon the State Board of Water Engineers the duty, among others, of investigating and determining private water rights as a step in the process of creating effective regulation and control over the taking of water from streams and other sources for irrigation purposes. (1920 TEX. REV. CIV. STAT., title 73, c. 1, arts. 5011½ f. *et seq.*) Proceedings before the board may be instituted by an individual claimant or "in case suit is started in any court for the determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the [board] for determination, as in this Act provided." Once set in motion, the board is required to ascertain all rights in the particular source to which its attention has been directed and, thereafter, to take proper means to supervise in detail the exercise of those rights. Determinations of the board are open to review *de novo* in appropriate proceedings before the local courts, provided an appeal is taken within sixty days, if the appellant appeared before the board, or three years, if he did not there appear. A proceeding before the board having been petitioned by one claimant, an injunction